IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.268 OF 2003

1. The First Custodian Fund (India) Limited, having its office at Surya Mahal, Nagindas Master Road, Fort, Mumbai – 400 001.
2. Mr. Manish Banthia, Director, the First Custodian Fund (India) Limited, having its office at Surya Mahal, Nagindas Master Road, Fort, Mumbai – 400 001.
3. Mr. Surendra Kumar Banthia, Director, the First Custodian Fund (India) Limited, having its office at Surya Mahal, Nagindas Master Road, Fort, Mumbai – 400 001. ... Petitioners

Versus

1. The Nedungadi Bank Limited, Shatabdi Bhawan, Govindapuram, Kozhikode, Kerala.
2. The State of Kerala
3. The State of Maharashtra ... Respondents

ALONG WITH

CRIMINAL WRIT PETITION NO.355 OF 2003

Mr. Shrikant G. Mantri, having his office at 2nd floor, Surya Mahal, Nagindas Master Road, Fort, Mumbai – 400 001. ... Petitioner

Versus

1. The Nedungadi Bank Limited, Shatabdi Bhawan, Govindapuram, Kozhikode, Kerala.)
2. The State of Kerala)
3. The State of Maharashtra) ... Respondents

ALONG WITH

CRIMINAL WRIT PETITION NO.356 OF 2003

The Harvest Deal Securities Limited, having its office at 3rd floor, Surya Mahal, Nagindas Master Road, Fort, Mumbai – 400 001.) ... Petitioner

Versus

1. The Nedungadi Bank Limited, Shatabdi Bhawan, Govindapuram, Kozhikode, Kerala.)
2. The State of Kerala)
3. The State of Maharashtra) ... Respondents

Mr. Shirish Gupte, senior counsel with Mr. Subodh Desai for the petitioner.

Mr. Prem Lal for respondents 1 and 2.

Mr. S.R. Borulkar, Public Prosecutor for respondent 3.

CORAM : SMT. RANJANA DESAI, & D.B. BHOSALE, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 30TH APRIL, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 25TH JUNE, 2007.

JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. The petitioners in these three criminal writ petitions filed under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure ("Code" for short) are the accused in the two complaints filed by respondent 1 - the Nedungadi Bank Limited in the Court of the Judicial Magistrate, First Class, Kozhikode, Kerala.

2. In Criminal Writ Petition No.268 of 2003, the petitioners seek quashing of C.C. No.4 of 2003. The said complaint is filed by respondent 1 against Rajendra Kumar Banthia (accused 1 therein), the First Custodians Fund (India) Limited (accused 2 therein), Manish Banthia (accused 3 therein) and Surendra Kumar Banthia (accused 4 therein). This petition is filed by the First Custodian Fund (India) Limited (accused 2), Manish Banthia (accused 3) and Surendra Kumar Banthia (accused 4).

3. In Criminal Writ Petition No.355 of 2003 and Criminal Writ Petition No.356 of 2003, the petitioners seek quashing of C.C. No.3 of 2003. C.C. No.3 of 2003 is filed by respondent 1 against Rajendra Kumar Banthia (accused 1 therein), Shrikant Mantri (accused 2 therein) and the Harvest Deal Securities Limited (accused 3 therein). Criminal Writ Petition No.355 of 2003 is filed by Shrikant Mantri (accused 2) and Criminal Writ Petition No.356 of 2003 is filed by the Harvest Deal Securities Limited (accused 3).

4. These petitions can be disposed of by a common judgment because both the complaints are based on similar facts. They arise out of similar

transactions which according to respondent 1 have adversely affected its business. The accused in both the complaints are intimately connected with each other. It is necessary at this stage to see the nature of the allegations levelled against the accused and in what manner the accused are connected with each other.

5. At the relevant time, respondent 1 being a scheduled bank was doing banking business. As per the affidavit of Mr. More, the Manager of the Punjab National Bank, respondent 1 has since been amalgamated with Punjab National Bank and after the amalgamation, the assets and liabilities, including the rights of respondent 1 have got vested with the Punjab National Bank.

6. The two complaints which are the subject matter of the instant petitions were filed by respondent 1 pursuant to scrutiny report of the share transactions conducted at respondent 1's Mumbai Regional Office by the Reserve Bank of India (for short, “the RBI”). The learned counsel for respondent 1 has made available to us copy of the said report along with the covering letter dated 6/12/2002 of the Chief General Manager in-charge of the RBI addressed to the Chairman of respondent 1. The covering letter states that the scrutiny among others revealed serious irregularities and mala fide intention on the part of the broking firms that is accused First Custodian Fund (India) Limited, accused Shrikant Mantri and accused Harvest Deal Securities Limited, who are closely connected with accused Rajendra Kumar Banthia and, therefore, it will be highly essential to take speedy action in the matter

against wrongdoers who have misused public deposits.

7. The scrutiny report and the complaints filed pursuant thereto reveal that the RBI had permitted scheduled banks like the complainant to invest in securities within stipulated limits. In the Board meeting held on 26/9/1999, it was decided by respondent 1 to take advantage of arbitrage opportunity in the price of shares in the Mumbai Stock Exchange and National Stock Exchange by trading in equities. Accused Shrikant Mantri, accused Harvest Deal Securities Limited and accused First Custodian Fund (India) Limited were recognized as brokers for the said purpose.

8. Accused Rajendra Banthia had acquired substantial number of shares of respondent 1 and is one of its major shareholders. He had high and considerable influence on the Board of Directors and the proceedings of the Board. Accused Shrikant Mantri who is a share broker is also a major shareholder of respondent 1. He is one of the directors of accused Harvest Deal Securities Limited. Brother of accused Rajendra Kumar Banthia is the Chairman and son of accused Rajendra Kumar Banthia is the Director of accused First Custodian Fund (India) Limited. Accused First Custodian Fund (India) Limited, accused Shrikant Mantri and accused Harvest Deal Securities Limited are functioning in the same room at Surya Mahal, Nagindas Master Road, Fort, Mumbai. They have same phone numbers and fax numbers. It was at the instance of accused Rajendra Kumar Banthia who had considerable influence on the Board of Directors of respondent 1, that

accused First Custodian Fund (India) Limited, accused Shrikant Mantri and accused Harvest Deal Securities Limited were appointed and authorised by respondent 1 to do trading in shares on its behalf to take advantage of arbitrage opportunity in stock prices. It appears that in the carrying on of arbitrage activity, respondent 1 used to place orders for purchase / sale of shares with the accused. As a consideration for carrying on transactions on the exchange for respondent 1, the accused charged brokerage.

9. The trading in equities / shares are done on Bombay On Live Trading (BOLT) and National Exchange Automated Trading. The brokers have to submit contract notes for the transactions undertaken by them giving details like trade time, quantity of shares traded, names of the companies whose shares are traded, purchase rate, brokerage payable, total amount of transaction, etc. Contract note is the record of the transactions. Thus, respondent 1 would know about the share transactions done by the accused only through the contract notes. No other document was available for that purpose. Respondent 1 had to pay money to the accused on the basis of the contract notes.

10. For the purpose of these petitions, it is not necessary to go deep into all the alleged acts of criminal breach of trust and cheating which according to respondent 1 bank exposed it to high risk. The RBI report gives meticulous details thereof. It is inter alia the case of respondent 1 that the contract notes were submitted by accused Shrikant Mantri, accused Harvest Deal Securities

Limited and accused First Custodian Fund (India) Limited with full knowledge of accused Rajendra Kumar Banthia and the other accused as the true record of the "On Line Trading". As the contract notes constituted valid contract between respondent 1 and the brokers, the accused were legally bound to give true and correct details of the transactions in the contract notes. They made respondent 1 believe, by their representations that the details contained in the contract notes were true and correct. The accused were aware of the fact that respondent 1 would be solely relying and depending on the contract notes for making payments thereunder and also for delivering the shares mentioned as sold on behalf of respondent 1.

11. According to respondent 1 accused Rajendra Kumar Banthia, accused First Custodian Fund (India) Limited and accused Shrikant Mantri are its major shareholders. Accused Rajendra Kumar Banthia, accused Manish Banthia, accused Surendra Kumar Banthia are close relatives. Accused Rajendra Kumar Banthia had his nominees on the Board of respondent 1 and he knew that contract notes submitted by them would be accepted by respondent 1 as true and correct. All of them conspired together and submitted forged contract notes and on the basis of such notes intentionally induced respondent 1 to part with money and valuable securities. During the investigation conducted by the RBI, the officers of the RBI came across 16 specific instances of manipulations committed by the accused. The contract notes submitted by the accused contained inflated quantities of purchase of sale of shares when, in fact, the accused had sold or purchased shockingly

low quantities of shares.

12. In C.C. No.3 of 2003 loss caused to respondent 1 is stated to be Rs.39,19,75,588.52 and in C.C. No.4 of 2003 the loss caused to respondent 1 is stated to be Rs.87,89,93,597.40. According to respondent 1, therefore, the accused have committed offences punishable under sections 120-B, 418, 420, 467, 468, 471 read with section 34 of the Indian Penal Code (for short, "the IPC").

13. In these petitions, the accused have denied the allegations of criminal misappropriation, forgery, conspiracy, etc. It is also contended that no cause of action arose within the jurisdiction of the learned Magistrate at Kozhikode. He could not have taken cognizance of the complaints and, hence, the complaints ought to be quashed.

14. Before we began the hearing of these petitions, we had asked the learned counsel for the petitioners Mr. Subhodh Desai, whether the petitioners want to withdraw the petitions and prosecute remedies available to them in law. Mr. Subodh Desai, stated that the petitioners had instructed him not to withdraw the petitions but to proceed with the hearing. We then made it clear that the petitioners will not be allowed to withdraw the petitions at a later stage. On this clear understanding, the hearing began.

15. We heard Mr. Shirish Gupte, the learned senior counsel instructed by

Mr. Subhodh Desai for the petitioners at great length. Considerable time was spent by us in hearing arguments of the counsel appearing for both sides on law as well as on facts. At the fag end of the arguments Mr. Gupte, the learned senior counsel requested that the petitioners may be permitted to withdraw the petitions with liberty to adopt appropriate proceedings either in the trial court or in the Kerala High Court. In the aforementioned background, we rejected Mr. Gupte's request. What weighed with us while rejecting Mr. Gupte's request is also the fact that by reason of ad-interim relief granted by this court as back as on 20/2/2003 which was confirmed on 16/6/2003 C.C. No.3 of 2003 has been stayed from February, 2003. C.C. No.4 of 2003 is stayed by reason of ad-interim order passed on 20/2/2003 from 20/2/2003. Warrants issued against the accused have also been stayed. Looking to the serious nature of the allegations, we are of the view that it is high time that the instant petitions are disposed of.

16. When we rejected Mr. Gupte's prayer, he submitted that at present he will only press the point of jurisdiction. He urged that this court may only deal with the point of jurisdiction, but may not express any final opinion on the merits of the case. We find no difficulty in granting this request because at this stage, we cannot express any final opinion on the merits of the case. It is for the trial court to do so. We shall, therefore, proceed to deal with the legal submissions advanced on behalf of the rival parties. We make it clear that nothing said by us in this judgment should be treated as our final expression on the merits of the case.

17. Mr. Gupte, the learned senior counsel for the petitioners submitted that the transactions referred to in the complaint were done pursuant to instructions received from the Department of Treasury and Investments of respondent 1 which is situated in Mumbai. The impugned transactions were placed on the Bombay Stock Exchange situated at the office of the accused which is at Mumbai. The contract notes in respect of the impugned transactions were issued to respondent 1 at Mumbai. Respondent 1 accepted them at Mumbai. The transactions resulted in deliveries of shares which were transferred from the demat account of the accused which is at the Mumbai branch of the depository participant – Global Trust Bank, where they maintain and operate their demat account, to the demat account of respondent 1, which was also maintained at and operated from Global Trust Bank at Mumbai. Payments of funds were also made to the bank accounts of respondent 1 in Mumbai and from the bank account of the accused at Mumbai. Mr. Gupte contended that therefore no part of the cause of action can be said to have arisen within the jurisdiction of the learned Magistrate at Kozhikode in terms of section 177 of the Code .

18. Mr. Gupte submitted that as per the Banking Regulation Act, 1949, a branch of a bank functions as an independent entity in respect of the banking business. Reliance is placed on the judgment of the Supreme Court in ***Agencia Commercial International Limited & Ors. v. Custodian of the Branches of the Banko Nacional Ultramarino (1982) 2 SCC 482***. It is

pointed out that in that case, it is held that a bank which operates through its branches, the branches are regarded for many purposes as separate and distinct entities from the Head Office and from each other and, therefore, the branch office of respondent 1 has to be regarded as a separate and distinct entity from the Head Office and, hence, respondent 1 could not have extended the jurisdiction to the learned Magistrate at Kozhikode, Kerala on a spacious ground that the Head Office / Registered Office of respondent 1 is situated at Kozhikode. Mr.Gupte submitted that the learned Magistrate could not have entertained the complaints.

19. Mr. Gupte submitted that Article 226(2) of the Constitution of India empowers a High Court to exercise its powers under Article 226(1) thereof to issue directions, orders or writs in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories. Mr. Gupte contended that in this case, the cause of action has wholly arisen within the territorial jurisdiction of this court and hence this court can quash the complaints in exercise of its powers under Article 226(2) of the Constitution of India. Mr. Gupte submitted that in the complaint except stating that respondent 1's Registered Office / Head Office is at Kozhikode and, therefore, the learned Magistrate at Kozhikode has jurisdiction to entertain the complaints, no averments are made to indicate how Kozhikode Court has jurisdiction to entertain the complaints. The Complaints are devoid of necessary averments. Mr. Gupte

submitted that therefore this is a fit case where complaints ought to be quashed.

20. In support of his submissions Mr. Gupte relied on the judgments of the Supreme Court in ***M/s. Swaika Properties & Anr. (1985) 3 SCC 217, Oil & Natural Gas Commission v. Utpal Kumar Basu & Ors. (1994) 4 SCC 711, Navinchandra N. Majithia v. State of Maharashtra & Ors. (2000) 7 SCC 640, Y. Abraham Ajith & Ors. v. Inspector of Police Chennai & Anr. (2004) 8 SCC 100 and Om Prakash Shrivastava v. Union of India (UOI) & Anr. (2006) 6 SCC 207***. He also relied on a judgment of this court in ***Nitin Industrial Associates, Khamgoan v. State of Maharashtra & Ors., AIR 1986 Bom. 298***.

21. Mr. Prem Lal, the learned counsel appearing for respondents 1 and 2 contended that accused Rajendra Kumar Banthia being a major shareholder of respondent 1, he used to influence the Board of Directors in major decisions and when RBI permitted banks to invest in shares in stipulated limits accused Rajendra Kumar Banthia used his influence and got his companies appointed as brokers of respondent 1. Mr. Prem Lal laid stress on the close inter connection between the accused and contended that all of them conspired to defraud respondent 1. They submitted fabricated contract notes to the Head Office of respondent 1 at Kozhikode for purchase and sale of shares. But, later on it was found that those contract notes included shares

that were not purchased. Mr. Prem Lal contended that the accused made the bank to part with crores of rupees towards value of shares and brokerage for shares that were not purchased. Mr. Prem Lal contended that the accused exposed respondent 1 to high risk. The RBI had to conduct an inquiry. As a result, the Punjab National Bank had to take over respondent 1. Mr. Prem Lal pointed out that the present complaints are filed on the basis of the RBI report.

22. Mr. Prem Lal submitted that the alleged offence is not just trading in the market at Mumbai. The alleged offence is committed by letters, such as over invoicing, over pricing and submitting bills for shares not purchased. Fabricated contract notes used to be sent to respondent 1's offices at Kozhikode to extract money illegally. Thus, the disastrous effect or consequences of the acts of the accused have ensued in the office of respondent 1 at Kozhikode which resulted in closure of the said 100 year old office. Mr. Prem Lal submitted that the Kozhikode court has jurisdiction to entertain the said complaints by virtue of section 177 of the Code read with section 182 thereof.

23. Mr. Prem Lal further submitted that the accused have not availed of the efficacious remedies available to them and, hence, the present petitions should not be entertained. He submitted that it was open for the accused to file revision application before the Sessions Court under section 397 of the Code. The accused could have filed an application for transfer under section

191 of the Code. The accused could have filed writ petition under Article 227 of the Constitution of India and under section 482 of the Code in the Kerala High Court which is the court having the territorial jurisdiction. Mr. Prem Lal submitted that since the accused have failed to avail of the efficacious and alternative remedies, they are not entitled to any relief from this court.

24. Mr. Prem Lal further submitted that the order of issuance of process is subject to revisional jurisdiction of this court and therefore at best the accused could have filed a writ petition under Article 227 of the Constitution. In a given case, inherent jurisdiction of the High Court may be invoked for quashing it. But, in such case, the petition has to be filed in the High Court within whose territorial jurisdiction the court of the learned Magistrate issuing process falls. In the instant case, the petitions could have been filed only in the Kerala High Court.

25. Relying on the judgment of the Supreme Court in ***Trisuns Chemical Industry v. Rajesh Agarwal & Ors., AIR 1999 SC 3499***, Mr. Prem Lal contended that provisions of Chapter XIII of the Code relate to the jurisdiction of the criminal courts. Provisions of the said chapter make it clear that after taking cognizance under section 177 of the Code, the Magistrate may have to decide as to which court has jurisdiction to enquire into or try the offence. He may then make over the case to appropriate court if found necessary as per section 192 of the Code. In the present case, according to Mr. Prem Lal since there is no error apparent on the face of record, the impugned orders merit no

interference. Besides, argues Mr. Prem Lal, unless the petitioners prove that the entire cause of action arose within the territorial jurisdiction of this court, writ jurisdiction of this court cannot be invoked. He submitted that whether the cause of action has arisen within the jurisdiction of this court or not can only be decided after the evidence is led. The petitions must, therefore, be dismissed.

26. Mr. Prem Lal drew our attention to the judgment of the Full Bench of the Kerala High Court in ***Meenakshi Sathish v. Southern Petrochemical Industries, 2007(1) KLT 890,*** where the Kerala High Court has considered the judgment of the Supreme Court in ***Majithia's case (supra)*** and held that it cannot interfere with the proceedings before a criminal court outside its jurisdiction. He submitted that the present case is covered by the said judgment. Mr. Prem Lal contended that even if this court comes to the conclusion that a petition under Article 226 can be entertained for quashing order issuing process, no case has been made out by the petitioners to invoke extra-ordinary jurisdiction of this court and, hence, no relief should be granted to the petitioners.

27. Mr. Borulkar, the learned Public Prosecutor is broadly in agreement with the submissions of Mr. Prem Lal. He placed heavy reliance on the judgment of the Supreme Court in ***Mosaraf Hussain Khan v. Bhagheeratha Engg. Ltd. & Ors. (2006) 3 SCC 658*** and submitted that the petitions deserve to be dismissed.

28. Since the basic prayer of the petitioners is for quashing of the criminal proceedings, it is necessary to refer to ***Bhajan Lal' s case (supra).*** In that case, the Supreme Court considered the principles of law enunciated by it in several decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code and laid down principles underlying the exercise of such power. It was inter alia held that where the allegations in the FIR even if taken at their face value and accepted in their entirety do not prima facie constitute any offence, where the proceedings are manifestly attended with mala fides, where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution or continuance of the proceedings, the extra-ordinary power under Article 226 or the inherent power under section 482 of the Code for quashing the FIR or criminal proceedings initiated against a person can be exercised. The Supreme Court clarified that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

29. One of the questions raised before us is whether this court has jurisdiction to entertain the present petitions filed under Article 226 of the Constitution and section 482 of the Code, praying that criminal proceedings pending in the court at Kerala be quashed. Mr. Gupte has contended that since the entire cause of action has arisen in the jurisdiction of this court, it can entertain the present petitions. On behalf of the respondents, it is contended that consequences of the actions of the accused have ensued in Kerala and, therefore, the accused will have to approach Kerala High Court. We shall briefly refer to the judgments which are cited by the learned counsel on this point.

30. In ***Swaika Properties' case (supra)***, the Supreme Court was considering whether the service of notice under sub-section (2) of section 52 of the Rajasthan Urban Improvement Act, 1959 served on the respondents at their registered office at Calcutta was an integral part of the cause of action and was sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under Article 226 of the Constitution challenging the validity of the notification issued by the Rajasthan Government for acquisition of certain lands for a public purpose. The Supreme Court observed that whether service of notice was an integral part of the cause of action within the meaning of Article 226(2) must depend upon the nature of the impugned order giving rise to a cause of action. On the facts before it, the Supreme Court held that service of notice was not an integral part of the cause of action and hence cause of action neither wholly nor in part arose within the territorial

limits of the Calcutta High Court. While setting aside the Calcutta High Court's order, the Supreme Court observed that although the powers of the High Court under Article 226 of the Constitution are far and wide and the judges must ever be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such executive powers with due circumspection and there has to be in the larger public interest an element of self-ordained restraint.

31. In ***Oil & Natural Gas Commission's case (supra)***, the Supreme Court was considering whether any part of the cause of action for filing the petition had arisen within the jurisdiction of the Calcutta High Court to entertain petition filed by NICCO praying that ONGC be restrained from awarding the contract to any other party. The Supreme Court took a resume of several judgments and held that on a plain reading of clause (2) of Article 226, it is clear that the power conferred by clause (1) can be exercised by the High Court provided the cause of action wholly or in part, had arisen within its territorial jurisdiction. The Supreme Court on facts observed that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court. The Supreme Court expressed its displeasure at court's assuming jurisdiction on the ground that trivial events unconnected with the cause of action had occurred within its jurisdiction. While setting aside the Calcutta High Court's judgment, the Supreme Court observed as under :

> *"If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."*

32. In ***Navinchandra Majithia' case (supra)***, the petitioner had filed a writ petition in this court praying that the complaint lodged by the respondent J.B. Holdings Limited in Shillong be quashed or in the alternative State of Meghalaya be directed to transfer the investigation conducted by officers of CID at Shillong to any investigating agency of the Mumbai Police. This court dismissed the writ petition holding that the writ petition could not be entertained because the petitioner had prayed for quashing the complaint which was lodged at Shillong in the State of Meghalaya.

33. The Supreme Court focussed its attention on Article 226(1) and (2) of the Constitution and observed that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that court. The Supreme Court discussed what is meant by the term `cause of action'

and after referring to its earlier judgments and the relevant provisions of the Code, the Supreme Court observed that so far as the question of territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered is the place where the alleged offence was committed. The Supreme Court quoted its observations in ***Oil & Natural Gas Commission's case (supra)*** pertaining to the question of jurisdiction of Calcutta High Court, which was involved therein that in order to confer jurisdiction on the Calcutta High Court, it must be shown that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. The Supreme Court then observed that this court did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners and that on the averments made in the writ petition, it cannot be said that no part of the cause for filing the writ petition arose within the territorial jurisdiction of this court. The Supreme Court thus set aside this court's order and directed that the complaint lodged at Shillong be transferred to Mumbai Police.

34. In the concurring judgment, Justice Thomas observed that the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which the `cause of action wholly or in part arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment by inserting clause 2 in Article 226 was aimed at widening the width of the area of reaching the writs issued by different High

Courts. After referring to its judgment in ***Oil & Natural Gas Commission's case (supra)***, Justice Thomas clarified that mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. But that does mean that any person can create a fake cause of action into the territorial limits of another State. Following are the relevant observations of Justice Thomas.

> *"We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case*."

35. In ***Om Prakash' case (supra)***, the appellant therein had filed a writ petition before the Delhi High Court inter alia contending that there was a violation of the terms of the Extradition Act. The Delhi High Court accepted that it may have jurisdiction but it was of the view that the grievance can be more effectively dealt with by the Allahabad High Court. The Delhi High Court thus disposed of the writ petition. After referring to Article 226(2) of the Constitution of India, the Supreme Court observed that in order to maintain a

writ petition, a writ petitioner has to establish that a right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof. The Supreme Court further observed that two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The Supreme Court observed that the approach of the Delhi High Court in disposing of the petition by accepting that it has jurisdiction but by observing that the Allahabad High Court can deal with the matter more effectively is not correct. The Supreme Court in the circumstances set aside the Delhi High Court's order and remitted the matter to it for fresh hearing on merits.

36. In ***Y. Abraham' case (supra)***, the Supreme Court was dealing with the question of legality of the judgment of the Madras High Court whereby the petition filed under Section 482 of the Code for quashing criminal proceedings pending before the learned Magistrate at Saidapet, Chennai was rejected. The Supreme Court considered sections 177 to 186 of the Code and on facts came to a conclusion that no part of cause of action arose in Chennai and

therefore, the Magistrate concerned had no jurisdiction to deal with the matter. The proceedings were therefore quashed.

37. Having regard to the above judgments of the Supreme Court and on a bare reading of Article 226 of the Constitution, it is not possible for us to hold that a writ of certiorari issued by the High Court under Article 226 of the Constitution cannot reach a person or authority outside its territorial jurisdiction if a part of the cause of action which gives the petitioner a right of relief has arisen within its jurisdiction. Registration of FIR in one State is not the sole criterion to decide that cause of action has arisen in that State. It can partly arise in another State also. In that case, the High Court of that State may also have jurisdiction to entertain a petition. But if fake cause of action is created, the High Court must refuse to entertain the petition. If it is a mala fide move on the part of the complainant, the High Court must take a strict view of the matter. The tendency to entertain a petition on the ground that certain events unconnected with the cause of action have taken place in its jurisdiction has been deprecated by the Supreme Court. It is clear from the judgments of the Supreme Court that the High Court must be satisfied from the entire facts pleaded in support of the cause of action that these facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. The facts pleaded must be such that they have a nexus or relevance with the lis that is involved in the case. The High Court's powers under Article 226 of the Constitution are very wide and that imposes greater responsibility on the High Court. While exercising

this power, it has to observe a self-ordained restraint.

38. Having discussed the High Court's powers under Article 226 of the Constitution, we will have to turn to the second submission of Mr. Prem Lal that a writ of certiorari ordinarily should not be issued under Article 226 of the Constitution quashing order issuing process because that order is subject to the revisional jurisdiction of the High Court under Article 227 of the Constitution and for that purpose, the petition ought to have been filed in the Kerala High Court in whose jurisdiction, the court which issued the process falls.

39. In ***Mosaraf's case (supra)***, complaint was filed in the court of Judicial Magistrate, Birbhum at Suri alleging that several cheques issued by the respondent had been dishonoured. The learned Magistrate examined the complainant on oath, took cognizance of the offence and issued summons to the respondent. The respondent filed a writ petition in the High Court of Kerala for quashing of the said complaint. The Kerala High Court entertained the petition and issued notice to the respondent and stayed the complaint. The question which arose for consideration before the Supreme Court was whether the Kerala High Court had jurisdiction in the matter.

40. The Supreme Court considered all the relevant judgments on the point including its judgment in ***Navinchandra Majithia's case (supra)***. The Supreme Court also referred to its judgment in ***Surya Devi Rai v. Ram***

Chander Rai (2003) 6 SCC 675 where it has made a distinction between exercise of jurisdiction by the High Courts for issuance of a writ of certiorari under Articles 226 and 227 of the Constitution and laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of record appears as such. The Supreme Court then clarified that it had referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. The Supreme Court quoted its observations in ***Surya Devi Rai' s case (supra)*** as regards the scope of jurisdiction of the High Court under Article 227 of the Constitution. The relevant quotation is as under :

> *"The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice and (iii) the jurisdiction though available is being exercised in a manner which tentamounts to overstepping the limits of jurisdiction."*

The Supreme Court further observed that only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof.

41. The Supreme Court referred to its judgment in ***Mayar (H.K.) Ltd. & Owners & Parties, Vessel M.V. Fortune Express (2006) 3 SCC 100*** and expressed that the High Courts must remind themselves about the doctrine of forum non conveniens. On facts after referring to sections 177 and 178 of the Code, the Supreme Court came to a conclusion that no part of the cause of action had arisen within the jurisdiction of the Kerala High Court. The Supreme Court in the circumstances, set aside the Kerala High Court's judgment.

42. We may also refer to the judgment of the Supreme Court in ***Ranjeet Singh V. Ravi Prakash (2004) 3 SCC 682***, where the Supreme Court reiterated its view in ***Surya Dev' case (supra)*** and held that to be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose jurisdiction the High Court was exercising jurisdiction should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long drawn process of reasoning cannot possibly be an error available for correction by writ of certiorari.

43. It is clear from the above judgments that though the High Court's powers under Articles 226 are very wide, a Writ of Certiorari will issue only when there is error apparent on the face of record. Assuming therefore that a

Writ of Certiorari can be issued, it is necessary to see whether in this case there is error apparent on the face of record. Here, though actual transactions might have been done through Bombay Stock Exchange or National Stock Exchange, the allegation against the accused is that they submitted false and fabricated contract notes to respondent no.1 to extract money. It is alleged that the accused have done over invoicing, over pricing, submitting bills for shares not purchased etc.. The contract notes used to be sent to the Head Office of respondent no.1 which is at Kozhikode, consequences of the illegal actions of the accused are alleged to have ensued in the head office of respondent no.1 at Kozhikode which has allegedly resulted in closure of the registered office of respondent no.1 which was functioning for more than 100 years. Provisions of Chapter XIII of the Code take care of such a situation. Section 177 of the Code postulates that ordinarily offence shall be inquired into or tried by a Court within whose local jurisdiction it was committed. Section 178, inter alia, deals with situations when it is uncertain in which of several local areas an offence is committed or which if is partly committed in one local area and partly in another or which if is a continuing offence committed in more local areas than one or where it consists of several acts done in different local areas. In such cases it may be inquired into or tried by a Court having jurisdiction over any of such local areas. Under section 179 offence is triable where act is done or consequences have ensued when the act is an offence by reason of anything which has been done and of a consequence which has ensued. Since consequences of illegal actions of the accused have ensued at Kozhikode, it cannot be said that Kozhikode Court

has no jurisdiction to try the complaints. In this case it cannot be said that there is any self-evident error.

44. It is also made clear by the Supreme Court that ordinarily the High Court is not expected to interfere with an order taking cognizance passed by a competent Court except in a proper case. In this case cognizance has been taken. In our opinion, the petitioners have not made out any case for invoking extraordinary jurisdiction of this Court for quashing of the complaints and order issuing process on the ground of alleged lack of jurisdiction. No exceptional circumstances are present in this case warranting interference from us. In our opinion, this is a case where we must observe self ordained restraint.

45. Besides, since it is the case of the petitioners that the learned Magistrate has assumed a jurisdiction which he does not have in the light of the judgments of the Supreme Court in ***Surya Devi Rai' case (supra)*** and ***Mosaraf case (supra)***, the petitioners at best could have approached the Kerala High Court by filing a Writ Petition under Article 227 of the Constitution. Instead of doing that the petitioners have approached this Court by filing petitions under Article 226 of the Constitution and under section 482 of the Code. In our opinion in the facts of this case the present petitions are totally misconceived.

46. We may also refer to the judgment of the Full Bench of Kerala High

Court in ***Meenakshi Satish' case (supra)***. In that case, the complaint under section 138 of the Negotiable Instruments Act was filed in Coimbatore court which was outside the jurisdiction of the Kerala High Court. It was sought to be quashed by filing a petition under section 482 of the Code and under Article 227 of the Constitution. The Kerala High Court observed that there cannot be any dispute that the complaint filed before the Coimbatore Court and the order taking cognizance thereof cannot be challenged under section 482 of the Code or under Article 227 of the Constitution before the Kerala High Court. The Kerala High Court then dealt with the contention that a writ petition under Article 226 will lie in view of clause (2) thereof, as part of the cause of action arose in Kerala. The Kerala High Court observed that the point to be decided was whether it can judicially review the action of the Magistrate taking cognizance under section 190(1)(a) read with section 200 of the Code and issuing process under section 204 thereof. It was observed that so far as the cause of action qua the learned Magistrate is concerned it arose in Coimbatore, outside the jurisdiction of the Kerala High Court and so even if the complainant has wrongly filed a complaint in the Coimbatore court, the action of taking cognizance and issuance of the process took place outside the jurisdiction of the Kerala High Court, the Kerala High Court cannot interfere with the proceedings before a criminal court outside its jurisdiction. We are in respectful agreement with the Kerala High Court.

47. In the circumstances, the petitions are dismissed. We, however, make

it clear that we have not expressed any final opinion on the merits of the case and the trial court shall deal with the pending cases on merits and in accordance with law. The proceedings pending before the trial court are stayed from February, 2003. In our opinion the proceedings brook no further delay. We, therefore, make it clear that the stay granted by this court is vacated. The trial court shall proceed with the cases. Office is directed to send writ of this court forthwith to the learned Judicial Magistrate, First Class at Kozhikode, Kerala. The Registrar General shall inform the concerned learned Magistrate that this court has vacated the stay and he can proceed with the pending cases.

[SMT. RANJANA DESAI, J.]

[D.B. BHOSALE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.268 OF 2003
ALONG WITH
CRIMINAL WRIT PETITION NO.355 OF 2003
ALONG WITH
CRIMINAL WRIT PETITION NO.356 OF 2003

Mr. Subodh Desai for the petitioners.

None for the respondents.

CORAM : SMT. RANJANA DESAI, &
D.B. BHOSALE, JJ.

DATED : 25TH JUNE, 2007.

P.C. :-

At this stage, Mr. Desai, the learned counsel for the petitioners states that the interim relief be continued for four weeks. In the circumstances of the case, the prayer is rejected.

[SMT. RANJANA DESAI, J.]

[D.B. BHOSALE, J.]